

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JAMAL BAYTON,	:	Civil Action No. 3:12-CV-2407
	:	
Plaintiff,	:	(Judge Brann)
	:	
v.	:	
	:	
PENNSYLVANIA	:	
COMMONWEALTH and	:	
JUDGE ARTHUR ZULICK,	:	
	:	(Magistrate Judge Blewitt)
Defendants.	:	

MEMORANDUM

February 12, 2013

BACKGROUND:

On December 3, 2012, plaintiff Jamal Bayton, proceeding *pro se*, filed a complaint pursuant to 42 U.S.C. § 1983. (Doc. No. 1). Construing the complaint liberally¹, Bayton's complaint alleges that the length of his state sentence has been calculated incorrectly. The named defendants are the Commonwealth of Pennsylvania and Monroe County Common Pleas Judge Arthur Zulick.

The matter was initially referred to United States Magistrate Judge Thomas M. Blewitt. On December 13, 2012, the magistrate judge filed an eighteen-page

¹*Pro Se* complaints in particular should be construed liberally. *Dluhos v. Strasberg*, 321 F.3d 365, 369 (3d Cir. 2003).

report and recommendation (Doc. No. 7), recommending that Bayton's complaint be dismissed as to the Commonwealth of Pennsylvania and Judge Arthur Zulick with prejudice. The recommendation is also that the complaint, as it alleges an incorrect calculation of his sentence, be dismissed without prejudice so that Bayton can pursue a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Objections to the report and recommendation were due December 31, 2012. Plaintiff did not file objections.

Because this court agrees with Judge Blewitt's thorough analysis, the court will not rehash the sound reasoning of the magistrate judge and will adopt the report and recommendation in its entirety. Bayton cannot maintain an action against the Commonwealth of Pennsylvania nor against Judge Zulick. Bayton may, however, file a petition for writ of habeas corpus, pursuant to the guidelines set forth in the report and recommendation.

s/Matthew W. Brann
Matthew W. Brann
United States District Judge

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PENNSYLVANIA	:	
COMMONWEALTH and	:	
JUDGE ARTHUR ZULICK,	:	
	:	
	:	(Magistrate Judge Blewitt)
Defendants.	:	

ORDER

February 11, 2013

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. United States Magistrate Judge Thomas M. Blewitt's Report and Recommendation is ADOPTED in full. (Doc. No. 7)
2. Plaintiff's Motion for Leave to Proceed *In Forma Pauperis* is DENIED as moot.
3. The complaint is DISMISSED
4. The clerk is directed to close the case file.

s/ Matthew W. Brann
Matthew W. Brann
United States District Judge